

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 22, 2012

In the Matter of RIGGIO, Minors.

No. 305409

Macomb Circuit Court

Family Division

LC Nos. 2008-000770-NA

2008-000772-NA

Before: WHITBECK, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Respondent Riggio appeals as of right from the trial court order terminating her parental rights to the minor children, A. Riggio and J. Riggio, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if children return to parent's home). We affirm.

I. FACTS

The Department of Human Services (DHS) filed a petition in December 2008 to take temporary custody of the children. DHS alleged substance abuse and mental health issues, as well as Children's Protective Services (CPS) and criminal histories. In July 2008 Riggio was arrested for operating a vehicle while under the influence of drugs (OWI) while the children were in the vehicle. And the children were previously in foster care in Oakland County in March 2007.

Riggio waived probable cause, and the trial court authorized the petition, finding that she was not receiving appropriate mental health treatment, had significant drug abuse issues, was charged with OWI and child endangerment, and failed to provide appropriate emotional, physical, or financial support, or a proper home. But the trial court ordered that Riggio be allowed supervised visits.

DHS filed an amended petition in January 2009, deleting some of the original paragraphs. Riggio pleaded no contest to the remainder. Riggio's parent agency agreement (PAA) required visitation, parenting classes, individual therapy, substance abuse assessment and compliance with recommendations, random weekly screens, and suitable housing and income. She was seeing a psychologist and psychiatrist.

By June 2009, Riggio was showing signs of improvement. She was complying with screenings, and although she had one positive screen, that was consistent with her prescriptions. Psychologist Patrick Ryan, PhD, who performed a psychological evaluation in May 2009, stated that while Riggio's drug-dependency scale was quite elevated, there was not a severe relapse potential. Riggio visited the children regularly, and they "loved to see her." She completed parenting classes and was participating well in substance abuse treatment, therapy, and monthly medication reviews. Dr. Ryan also opined that Riggio had a "reasonably good understanding of the basic vicissitudes of parenting." Riggio was working on an associate's degree in medical assistance and looking for work. The trial court, therefore, granted Riggio's request for unsupervised visits at DHS's discretion.

A permanency planning hearing was held in September 2009, at which time Riggio was working for a temporary agency and living with her mother. Riggio had unsupervised visits with the children, often arriving early and bringing activities and projects. She had a very strong bond with both children. Later, the trial court received a report from psychiatrist Bernadette Angeles, MD, stating that Riggio was making consistent progress. Riggio's drug screens from May to August were negative except for one refusal in June.

At a special review in October 2009, it was reported that the children had been home five nights a week for three weeks and there were no problems. The trial court ordered the children returned home with reunification services.

However, shortly thereafter, Riggio's progress experienced a setback. Five days after reunification, the children were again removed and an emergency hearing was held because Riggio reported that her mother attacked her. Riggio's mother was arrested and charged with domestic violence, and a CPS complaint was filed. Riggio stated that she intended to file a petition for commitment of her mother. Riggio was able to find a shelter where she could stay with the children, but the referee would not permit the children to reside in a shelter. No short-term foster homes or emergency funds were available. So it was agreed that Riggio could continue to stay in her mother's home while her mother was absent and that visits would continue unsupervised.

The next review was in December 2009. Riggio's medication levels and a Michigan automated prescription system (MAPS) report suggested prescription drug abuse or misuse. Caseworker Janelle Schneider stated that the children had been placed in a new foster home in October 2009. Riggio was still working and attending business school. She now lived with her stepmother. DHS recommended continued unsupervised day visits. And the children were telephoning Riggio daily. However, the Lawyer-Guardian Ad Litem recalled the foster mother's report of Riggio having slurred speech. The referee did not think the MAPS report necessarily showed substance abuse. Therefore, visits were allowed to continue unsupervised.

Another permanency planning hearing was held in February 2010. DHS reported that Riggio was stopped for driving without a license (DWLS) on February 15, 2010, and may have been admitted to Harbor Oaks for mental health treatment. She missed some drug screens. DHS recommended that visits be supervised again. The trial court agreed, but allowed unsupervised visits if documentation showed no problems.

It was later revealed that DHS's suspicions regarding Riggio's admission to Harbor Oaks were correct. On February 19, 2010, Riggio went to St. John Hospital stating that she had been crying for two days and was thinking of harming herself. Riggio had apparently attempted suicide before. She stayed in Harbor Oaks for two days, went home for a short time, and then returned on March 3, 2010. She felt her medications were not working. The previous weekend, she took a whole bottle of a prescription seizure medication; although she told emergency personnel that she only took several pills. Riggio was not eating or sleeping, had episodes of shortness of breath, and said that she could not function or take care of herself. She was diagnosed with bipolar illness, type 1, depressed phase. Other reports revealed that Riggio had also been stopped for DWLS in November 2009 and OWI in June 2009.

The next review was in May 2010. Riggio was back living with her mother after living with her boyfriend and his mother in February and March. She was no longer employed and not in therapy. While she lived with her boyfriend, it was necessary for her boyfriend's mother to lock up her medicines and administer them as prescribed. Riggio was unsuccessfully discharged from the Sacred Heart substance abuse program in October 2009. She was again missing screens and call-ins. Riggio admitted abusing prescription medications to Macomb Community Mental Health where she saw a psychiatrist, Dr. Post, for emergency medication reviews. Dr. Post prescribed 120 Klonopins, which Riggio used within a week. Dr. Post recommended detoxification and an intensive, dual-diagnosis program. At this time, her visits with the children had continued unsupervised, and she spoke with the children each evening. DHS again recommended supervised visits.

At the hearing, Vanessa Soave of DHS stated that the children were doing well. J. Riggio was being evaluated for speech therapy, and Riggio attended her appointments. But Riggio missed a meeting with DHS due to lack of transportation. The trial court directed DHS to file a termination petition and ordered supervised visits.

At a June 2010 hearing, it was reported that there was no food in Riggio's mother's house and Riggio could not remember the last time she ate. Riggio had missed 47 call-ins and 18 screens. Fifteen screens showed no prescription substances, which meant Riggio was not taking her medicines as prescribed. She also had six positive, diluted, or refused screens. In May 2010, she had tested positive for Darvocet, which Riggio said that she got from her boyfriend's mother, thinking that it was Motrin.

The Lawyer-Guardian Ad Litem reported that Riggio's visits were consistent and appropriate, and the girls liked talking to Riggio before bed each night. They were well-behaved and had no adjustment problems after visits. However, the Lawyer-Guardian Ad Litem nevertheless recommended termination. The trial court accepted the petition because of the length of time in care. But the trial court allowed visits to continue because the girls were very bonded to Riggio.

The termination hearing began in August 2010. Soave testified that Riggio partially complied with the parenting requirements of the PAA. She finished parenting classes in May 2009, but did not benefit sufficiently. Recent concerns included Riggio canceling a visit in February 2010 because of being up all night fighting with her boyfriend and sounding "out of it" on the phone with the girls twice in April 2010. Soave testified that Riggio also continued to

have mental health issues. She attended therapy off and on, and it was questionable whether she was taking her medications correctly, especially in light of her hospitalization at Harbor Oaks with thoughts of suicide. Her actions showed mental instability. Soave believed that Riggio had not rectified her substance abuse problem. Despite recommendations to attend AA/NA, Riggio never went. Accordingly, Soave felt that termination was in the children's best interests because the conditions that brought them into care continued, Riggio probably could not rectify them or provide proper care or custody, and the children would be at substantial risk in her care.

Additionally, Riggio's psychiatrist, Victoria Baskin, MD, diagnosed Riggio with bipolar disorder, ADHD, panic disorder, and polysubstance abuse in remission. Further, DHS caseworker Stephanie Laube-Ventline had informed Dr. Ryan that Riggio had "not benefited from any services" and was "more or less noncompliant throughout."

When the hearing continued in November 2010, Laube-Ventline reported that Riggio was residing with her fiancé's family and was on a list for Section 8 housing. Her current housing did not have room for the children. Riggio signed up for another parenting class but did not go. J. Riggio was diagnosed with adjustment disorder with anxiety, and A. Riggio with adjustment disorder with depressed mood. Visits were going well, and Riggio's screens were consistent with her prescriptions. She was attending therapy regularly and doing well. She was therefore in compliance with her PAA except possibly for income and housing. Riggio had made "some great progress," but given the amount of time in care, DHS recommended termination and suspension of visits. The Lawyer-Guardian Ad Litem agreed. The trial court accepted the petition but continued supervised visits. The referee stated, "[T]oday we are no closer to these children going home than we were two years ago."

After two more adjournments, the hearing continued in June 2011. Riggio again requested adjournment because she was in jail for a probation violation and not being given proper medications. But the trial court denied this request.

Officer Michael Notoriano of the St. Clair Shores Police testified that on November 24, 2010, he was called to the Doctor's Clinic to investigate a stolen prescription pad. Riggio had been working there as an intern. Initially, she had denied having the prescription pad. Riggio consented to a search of her backpack, but then on her way back from getting the backpack, she went off behind a doorway as if she was trying to conceal something. Officer Notoriano searched that area and found Riggio's day planner with blank prescription pads inside from Doctor's Clinic. A scrap of paper in the backpack had the signature of one of the doctors, and it appeared that someone may have been practicing the signature. Riggio became visibly upset and said she "didn't mean to take it." When the officer went to arrest Riggio, she said, "[N]ow I'm not going to get my kids back." She also said, "I don't know why I did it. I don't know what I was thinking. I'm sorry, I'm sorry." After the incident, Riggio was fired.

Troy police officer Michael Szyminski testified that on May 14, 2011, he responded to a call regarding a shoplifting at Macy's. The security officer said Riggio stole over \$100 of clothing, punched the wall, and threatened to commit suicide as soon as she got out of jail. She expressed fear of losing her children. She was taken to Troy Beaumont Hospital for psychiatric evaluation.

Laube-Ventline recommended termination, stating that Riggio had not benefited sufficiently from services, and the children would be at risk of harm in her care. Further, she opined that termination was in the children's best interests to provide stability, guidance, love, and structure. The current foster parents were interested in adoption, and the children were interested in living with them if they could not return to Riggio.

The Lawyer-Guardian Ad Litem supported termination. Accordingly, the trial court terminated Riggio's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

II. ADMISSION OF PSYCHOLOGICAL REPORTS

Riggio claims that the trial court abused its discretion in admitting the psychological reports of Dr. Patrick Ryan. However, use of psychological reports in child protective proceedings is well established.¹ And in the present case, Riggio stipulated to the admission of Dr. Ryan's reports, so we find no plain error affecting Riggio's substantial rights.²

III. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Riggio contends that the trial court clearly erred in terminating her parental rights where she was not timely provided with appropriate services but made significant improvements. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.³ We review for clear error a trial court's decision terminating parental rights.⁴ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁵ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. ANALYSIS

The trial court did not clearly err in finding clear and convincing evidence to satisfy the statutory grounds. The children were removed in December 2008, and Riggio entered a plea to an amended petition in January 2009 that alleged substance abuse, mental health issues, and

¹ MCR 3.977(H)(2); *In re Johnson*, 142 Mich App 764, 766; 371 NW2d 446 (1985).

² *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

³ MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁴ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Children's Protective Services and criminal histories. Her court-ordered parent agency agreement required parenting classes, visitations, psychological and substance abuse evaluations and counseling, drug screens, and suitable housing and income. Riggio partially complied with these requirements. She completed parenting classes, her visits were appropriate and consistent, and the children loved to see her. She also had attended substance abuse and mental health therapy for over a year and received good reports.

However, Riggio missed many drug screens and tested positive for cocaine in November 2010. She had two psychiatric hospitalizations in 2010, domestic violence incidents with her mother, including one that occurred when the children were living there, and a probation violation and retail fraud arrest in May 2011. Further, in November 2010, Riggio attempted to steal a prescription pad from the medical office where she had an externship. During the final termination hearings, Riggio was incarcerated.

The above circumstances showed that Riggio had not sufficiently benefited from services⁷; that, although briefly improved, the conditions of adjudication continued; and that there was a reasonable likelihood of harm if children returned to Riggio's care. Therefore, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Riggio's parental rights.

IV. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights.⁸ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.⁹ We review for clear error the trial court's decision regarding the child's best interests.¹⁰

B. LEGAL STANDARDS

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.¹¹ A trial court may also consider the strength of the bond between the parent and child, the visitation

⁷ See *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

⁸ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

⁹ *In re Trejo Minors*, 462 Mich at 353.

¹⁰ *Id.* at 356-357.

¹¹ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.¹² A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹³

C. ANALYSIS

Riggio has not specifically argued the issue of best interests. Regardless, we conclude that the trial court did not clearly err in finding that termination of Riggio's parental rights was in the child's best interests. The case was pending for 30 months. And because of Riggio's criminal activity, drug abuse, domestic violence, mental health issues, and instability in income and housing, she would be unable to offer the children an appropriate home. While the children were bonded with Riggio and wanted to go home, the best interests in their care and well-being trumps their emotional ties. Riggio's erratic behavior showed that the children would remain at risk in her care.

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly

¹² See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹³ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).